

REMARKS

Claims 1-7, 9, 10, 12, 14-23, 38 and 40-62 are all the claims pending in the application.

Claim 1 is amended to refer to a "survival rate" as supported by the specification, for example, on page 16, lines 2-3. Claim 51 is amended to correct a informality and claim 57 is amended to depend from claim 7 to correct a typographical error. Hence no new matter is presented.

I. Response to Claim Rejections under 35 U.S.C. § 112, 2nd Paragraph

Claims 1-7, 9-10, 12, 14, 38 and 40-62 are rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite.

Claim 1 is rejected based on the term "a mortality rate of at least 99%". The Examiner states that "at least 99% reads on 100% and it is not clear how the "surviving sells are isolated" if the mortality rate is 100%. Further, the Examiner states that there is insufficient antecedent basis for the term "the surviving cells".

Claim 1 is amended to refer to a "survival rate equal to or less than 1%" as supported, for example, on page 16, lines 2-3, thereby obviating this ground of rejection.

In claims 2 and 57, the terms "bad smell" and "bad or abnormal taste" are considered as relative terms, which are not defined by the claim and for which the specification does not provide a standard for ascertaining the requisite degree.

Applicants respectfully traverse this ground of rejection. As indicated in the Second Preliminary Amendment filed on May 28, 2004 regarding the term "a bad smell or a bad or abnormal taste", Applicants respectfully submit that such is a term of art within the common knowledge of the skilled artisan. As indicated on page 56 of the Yeast Technology reference

(previously submitted as Attachment D with the Second Preliminary Amendment filed on May 28, 2006):

Strain selection and strain improvement in the baker's yeast industry are aimed at achieving two important goals: achieving superior bake activities and providing a low-cost baker's yeast without affecting [bakery]product quality (emphasis added).

A copy of the Yeast Technology reference is attached herewith for the Examiner's convenience.

Thus, it is shown that it is part of the common knowledge of one of ordinary skill in the art of yeast strain improvement that, when developing new industrial yeast strains for use in bread-making, the person skilled in the art must check two distinct aspects before selecting a given strain for industrial use:

1) improved bake activities and low production costs of the yeast strain (in the present case in particular: resistance to stress, fermenting capacity and growth (see the selection criteria in amended claim 1, which are characteristics of a fil phenotype)); and

2) no detrimental effect on the bakery product quality.

According to the first aspect above, as the new yeast strain has improved bake activities; i.e., improved fermentation or leavening activity in the dough, the second aspect of unaffected bakery product quality, essentially refers to the organoleptic properties (taste and smell) of the bakery product.

Therefore, it is clear that the characteristic of the new yeast strain of not leading to a bad smell or a bad or abnormal taste in bread is a common aspect of yeast strain improvement processes as practiced by the person skilled in the art.

In regard to the concern with the perceived relative and subjective nature of the phrase “a bad smell or a bad or abnormal taste”, Applicants submit that sufficient guidance is provided in the specification as mentioned on page 9, lines 26 to 29, page 24, lines 19 to 23 and page 26, lines 19 to 22.

The most appropriate adjectives for qualifying the objectionable tastes and/or smells, which, if detected in bread, lead to the rejection of the corresponding yeast strain are:

1. abnormal, and, in particular,
2. off (meaning: in bad condition, wrong, abnormal; odd; spec. . . . (b) of food stale, sour, beginning to decay, contaminated”. The New Shorter Oxford English Dictionary, 1993 Ed.

These terms are not descriptive of personal preferences and dislikes, but of a matter of fact. They refer to characteristics or properties that are alien to the normal product. For example, the question whether milk is off, is a question of fact and not a question of personal preference or dislike for sour milk.

In the present context, in the course of the process according to the claimed invention, yeasts strains may be created that lead to an abnormal or off taste or smell in bread and must be discarded. The occurrence of abnormal or off taste and/or smell in bread is due to the production by the yeast affected by the mutation(s) of one or more secondary metabolites in the bread dough giving rise to the abnormal or off taste and/or smell in the bread.

A taste or smell is “abnormal” or “off” if the consumers, as a collective entity, would consider said taste or smell to be abnormal, i.e., alien to the taste or smell of the same type of

bread when produced with an industrial baker's yeast strain. This does not necessarily mean that, when considered outside the context of bread-making, the smell or taste must necessarily be considered unpleasant.

Likewise, the person skilled in the art knows the smell and taste profiles of bread types and is able to detect an abnormal or off taste in bread products produced with a specific yeast strain and which is alien to the type of bread product.

The taste and smell criteria therefore does not distinguish between good and bad smells or between good or bad tastes, but instead distinguished between the tastes and smells of a bread product and those tastes and smells that are alien to the bread product.

Thus, in view of the above, Applicants respectfully submit that one of ordinary skill would readily understand the meaning and scope of the terms "bad smell" and "bad or abnormal taste".

Regarding claim 57, the Examiner states that it is unclear whether it still depends from claim 1 in view of the Amendment filed May 28, 2004.

Claim 57 is amended to depend from claim 7, thereby obviating this ground for rejection.

Accordingly, Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. § 112, 2nd paragraph.

II. Conclusion

Accordingly, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner

feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

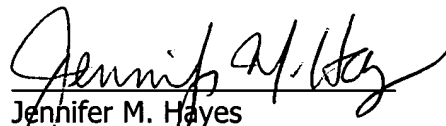
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